IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 859 OF 2005

IN

NOTICE OF MOTION NO. OF 2005

IN

LONG CAUSE SUIT NO. 1821 OF 2005

Amin Akbarali Hooda ... Appellant
(Orig. Plaintiff)

Vs.

Bombay Municipal Corporation ... Respondents
(Orig. Defendants)

Shri Y.S.Jahagirdar, Senior Counsel with
Shri R.A.Thorat & Shri V.A.Sugdare for the Applicant.
Shri R.A.Malandkar for B.M.C.

CORAM: B.H.MARLAPALLE,J.

DATE : 9th September,2005.

P.C.

1. Heard Mr. Jahagirdar, learned Senior Counsel with Mr. Thorat and Mr. Sugdare, learned Counsel for the Appellant-Plaintiff and Mr. Malandkar, learned Counsel for the Respondent-Corporation. The impugned order has been passed by the learned Judge of the City

Civil Court at Bombay on 24.8.2005 dismissing the Notice of Motion No. 1550 of 2005 filed in L.C. Suit No. 1821 of 2005.

2. The Plaintiff was issued a notice under Section 351 of the Bombay Municipal Corporation Act, 1888 on 4.5.2001 in respect of the unauthorised extensionin Shop Nos. 15 and 16 - rear side. The said notice was replied and the Assistant Municipal Commissioner held that the defence taken by the Plaintiff did not make out a case to withdraw the notice issued under Section 351 of the Act. The Plaintiff has placed reliance on the following documents :-

(a) Notice under Section 351 of the B.M.C.Act issued on 8.6.1961.
(b) Letter of Corporation addressed to A.H.Yusuf Khairali dated 10.7.1961.
(c) Letter of City Engineer addressed to Mr.Khairali dated 28.7.1961.
(d) Permission letter dated 1.4.1956 addressed to Mr.A.H.Khairali; and
(e) Letter of A.H.Yusuf Khairali dated 13.6.1961 and addressed to the Assistant Engineer Building E-1 Diision.

3. It is clear from the order of the Additional

Municipal Commissioner that all these documents were considered. Pursuan to the enquiry conducted as per the directions issued by the City Civil Court in BCCC Suit No.2350 of 2002, it was noted that the said Mr. A.H.Khairali had filed Suits No.2389 of 1990 and 6608 of 1999. He had contended in both these Suits that he came in possessiion of Shop No.15 in November 1989 and that prior thereto, one Mr.Sukanali Raje was in possession thereof. On the basis of these admissions of Mr. Khairali, the above quoted documents came to be discrded as unreliable while deciding the Notice of Motion. The view taken by the trial Court in dismissing the Notice of Motion is a prima faice view and if the Plaintiff is able to prove the documents as genuine by leading evidence, he may succeed in the suit, but as at present, there is no reason to reverse the findings recorded by the Additional Municipal Commissioner. Even in the notice dated 4.5.2001, the sketch shown indicates that these shops have extensions on the rear side. I have also perused a copy of the Plaint submitted by Mr. Jahagirdar in Suit Nos. 2389 of 1990 and 6608 of 1999. The enquiry findings are based on these documents.

4. Under the circumstances, the impugned order cannot be faulted with and therefore this Appeal must fail.

5. The Appeal is hereby dismissed in limine.

6. In view of the above order, the Civil Application No.1007 of 2005 does not survive.

(B.H.MARLAPALLE,J.)